

**KAMIL LEŚNIEWSKI<sup>1</sup>****ORCID: 0000-0003-2988-0024**

## **CRIME CONTROL IN THE COAL MINING INDUSTRY. IN SEARCH OF EFFECTIVE COOPERATION BETWEEN COAL MINING COMPANIES AND LAW ENFORCEMENT AGENCIES: THE CASE OF THE JOINT-STOCK COMPANY POLSKA GRUPA GÓRNICZA S.A.**

### **Introduction**

**T**he history of Polish mining is also a history of frauds and crimes. Only after the political transformation was special attention paid to the latter, particularly in the media, political circles, and among law enforcement agencies. This type of crime currently affects various fields of activity of coal mining companies, and specifically the sale of coal, scrap metal management, machinery and equipment management as well as the purchase of materials and services, thus generating multi-million PLN losses every year. Criminal proceedings regarding the so-called coal cases, provided they are investigated at all, appear to be time-consuming and quite frequently do not offer sufficient evidence to bring charges against a person, and mainly result in discontinuation due to the failure to identify the perpetrator or, when such charges have been presented and the indictment has been filed in a competent court, in the defendant's acquittal. This situation may be due to several factors. One of them seems to be the specificity of the crime under analysis, which is strongly related to the specificity of the mining industry, and thus in many cases it requires specialist technical inside knowledge. This fact, as regards criminal proceedings, brings considerable difficulties, both in terms of detection and conducting proceedings to take evidence<sup>2</sup>. In view of the

<sup>1</sup> Kamil Leśniewski — a PhD student at the Department of Forensic Science of the Jagiellonian University in Krakow and a judicial trainee at the National School of Judiciary and Public Prosecution; the author of publications on forensic science and international humanitarian law. During his MA studies, he received a scholarship of the Minister of Science and Higher Education for outstanding academic achievements.

*E-mail for correspondence: k.lesniewski@doctoral.uj.edu.pl.*

<sup>2</sup> Wilk D (Ed.), *Kryminalistyka. Przewodnik*. Toruń, 2013, pp. 25-28.

above, in the case of the said crime, it is particularly important to ensure effective cooperation and efficient information flow between the injured party (a coal mining company) and law enforcement agencies. It seems that this approach – despite the aforementioned difficulties – enables the mechanisms used to commit the criminal offences to be identified, potential perpetrators to be indicated, and criminal liability for these offences to be attributed<sup>3</sup>.

This paper aims to analyse the current model of cooperation of the largest coal mining company in the European Union, Polska Grupa Górnicza S.A., with law enforcement agencies in counteracting crime related to the Company's activities, and to identify good practices in this field.

### **The role of the Internal Control and Audit Office at PGG S.A. in counteracting crime against the Company**

As Tadeusz Hanausek aptly notes, one of primary sources of information about crimes by law enforcement agencies is the control and audit institutions that operate in various business entities<sup>4</sup>. In Polska Grupa Górnicza S.A. (PGG S.A.), this is the Internal Control and Audit Office. It was established in November 2016 out of the Internal Audit Office, which until then had been operating within the structures of Kompania Węglowa S.A. (KW S.A.)<sup>5</sup>. Originally, the Office employed 5 persons; now (as of 20.01.2020), among the 20 persons working there there are lawyers, economists, analysts, IT specialists, mechanical, electrical and digital engineers, and mining engineers. It should be stressed that many employees at the Office have relevant certificates and authorisations to perform control and audit procedures both above and under the ground in coal mines, which is still a novelty in the Office's operation. Taking into consideration the size of PGG S.A. – with its over 41,000 employees and annual turnover exceeding PLN 10 bln<sup>6</sup> – these changes are justified and reasonable. There are four active teams in the Office: the Control Proceedings Team, the Audit Proceedings Team, the Operation and Evaluation Team, and the Information and Analysis Team. Moreover, the Office cooperates (as of 20.01.2020) with an external entity that specialises in criminal law, and provides the Company with competent

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<sup>3</sup> Gronowska B, Pokrzywdzony przestępstwem i jego rola w przygotowawczym postępowaniu karnym. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1985, Vol. 4, pp. 130-131.

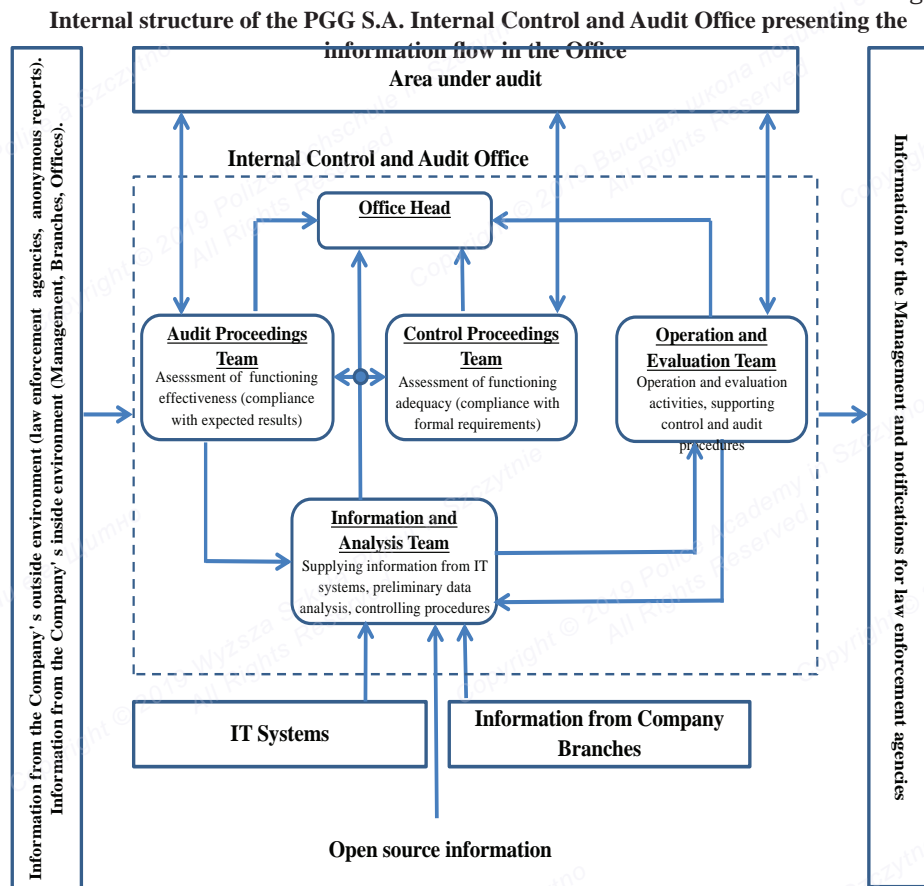
<sup>4</sup> Hanausek T, *Zarys taktyki kryminalistycznej*. Warsaw, 1994, p. 43.

<sup>5</sup> Kompania Węglowa S.A. was established on 01.02.2003 out of Gliwicka Spółka Węglowa S.A., Rybnicka Spółka Węglowa S.A., Rudzka Spółka Węglowa S.A., Bytomska Spółka Węglowa S.A. and Nadwiślańska Spółka Węglowa S.A. On 29.04.2016, KW S.A. sold all of its coal mines and four specialist plants to Polska Grupa Górnicza sp. z o.o. On 01.01.2018, Polska Grupa Górnicza sp. z o.o. was transformed into Polska Grupa Górnicza S.A.

<sup>6</sup> According to the *Management Report on the Activity of Polska Grupa Górnicza S.A. in 2018*, the total number of employees in PGG S.A. as of 31.12.2018 was 41,909, and the Company's total revenues in 2018 amounted to PLN 9,543,421.00

representation in criminal cases before law enforcement agencies and the judiciary<sup>7</sup>. In practice, this cooperation is demonstrated by, e.g. involving the said entity in the proceedings of the control and audit team as soon as any irregularities, indicating that a criminal offence may have been committed, are identified during the control and audit procedures. It actively participates – as the representative of the injured party<sup>8</sup> – in criminal proceedings, and in particular takes an active part in procedural steps carried out in its course as well as submits relevant applications for adducing evidence<sup>9</sup>.

Fig. 1



Source: developed by the author on the basis of the Internal Control and Audit Regulations of 16 January 2020

<sup>7</sup> This entity also participates in civil and administrative proceedings if they are related to criminal cases.

<sup>8</sup> Grochowska-Wasilewska A, Reprezentacja pokrzywdzonej spółki prawa handlowego przez pełnomocnika – uwagi na tle art. 51 § 1 k.p.k. *Przegląd Prawa Handlowego*, 2019, Vol. 2, pp. 25-30.

<sup>9</sup> See: Sych W, Wpływ pokrzywdzonego na tok postępowania przygotowawczego w polskim procesie karnym. Zakamycze, 2006.

In accordance with the Organisational Regulations of Polska Grupa Górnicza S.A., the said Office is primarily responsible for controlling the Company's operations in all of its fields of activity in terms of four criteria: legality, reliability, economy, and purposefulness. The Office performs this task on the basis of the *Internal Control and Audit Regulations* of 16 January, 2020. Although this document does not explicitly say that the Office is to counteract crimes that may occur at the Company, this task can be inferred from the criteria of the said audits. An analysis of documentation carried out by the Control and Audit Office showed that in some cases certain irregularities were observed that indicated a criminal offence, categorised either in the Criminal Code<sup>10</sup> or in special acts, e.g., in Article 56 of the Act on Public Statistics of 29 June 1995<sup>11</sup>, might have been committed. This, eventually, resulted in PGG S.A. filing relevant notifications of a suspected criminal offence.

### Example I<sup>12</sup>

In 2017, the Internal Control and Audit Office carried out an audit in one of the PGG S.A. branches, the aim of which was to investigate the adequacy of the implementation of a contract with an external company providing assembly lift services to PGG S.A. The audit results showed that within the contract duration, certain irregularities occurred repeatedly regarding the contract implementation. The irregularities consisted, e.g., in altering documents as to their reference numbers, dates of their issuance or completion, as well as settling the aforementioned services which had never been performed. The irregularities identified during the audit procedure were documented and the materials corroborating them were safely secured. Relying on the audit findings and evidentiary materials collected, a notification of a suspected criminal offence was filed. The findings of the Office were confirmed during the pre-trial proceedings. The evidence gathered in this case allowed 363 corruption charges to be filed in relation to two groups of persons, i.e., the owner of the external company (offences under Article 270(1) of the Criminal Code and Article 273 of the Criminal Code in connection with Article 11(2) of the Criminal Code with Article 12(1) of the Criminal Code and under Article 271(3) of the Criminal Code), as well as five employees of PGG S.A. (offences under Article 18(3) of the Criminal Code in connection with Article 271(3) of the Criminal Code and Article 271(1) of the Criminal Code with Article 11(2) of the Criminal Code). These persons were convicted with a final and binding judgement<sup>13</sup>.

<sup>10</sup> Act of 6 June 1997 – The Criminal Code, consolidated text, Dz.U. [Journal of Laws] of 2019, item 1950, as amended.

<sup>11</sup> Act of 29 June 1995 on Public Statistics, consolidated text, Dz.U. [Journal of Laws] of 2019, item 649, as amended.

<sup>12</sup> This example, along with other examples, was developed relying on an analysis of documents held by the PGG S.A. Internal Control and Audit Office, interviews conducted with the Office's employees, and on criminal files.

<sup>13</sup> Judgement of the District Court in Mikołów of 12.12.2018, court file No II K 456/18, unpublished.

## Example II

In 2016, the Internal Control and Audit Office carried out an audit, the aim of which was to identify the actual amount of coal in the coal heaps in one of the Company's branches. The audit showed that there was less coal in the said branch company than was reported in the relevant documentation. Thus, it was determined indisputably that the mining documentation was doctored, i.e. the statistical data provided were not consistent with the facts regarding the amount of coal mined. This was confirmed by documents collected in this case which were secured by the auditors. On the basis of the audit findings and the materials collected, a notification of a suspected criminal offence was filed. In the course of the pre-trial proceedings, the findings of the Office were confirmed and the evidence gathered in the case allowed charges to be filed against the persons responsible (offences under Article 56(1) of the Act of 29 June 1995 on Public Statistics in connection with Article 12(1) of the Criminal Code), later followed with a final and binding judgement<sup>14</sup>.

The obligation to counteract crime can also be inferred from the regulation of the President of the Management Board of Kompania Węglowa S.A.<sup>15</sup> of 18 November 2015 on the development and transfer of information to law enforcement agencies and other state authorities. It says that the Internal Audit Office (currently the Internal Control and Audit Office) has been appointed to coordinate all matters related to the development and transfer of information and documents for the public prosecutor's office<sup>16</sup>, Police<sup>17</sup>, ABW (Internal Security Agency)<sup>18</sup>, CBA (Central Anti-Corruption Bureau)<sup>19</sup>, and NIK (Supreme Audit Office)<sup>20</sup>. § 2 of this regulation views coordination as:

- informing the designated offices of the Head Office and other organisational units comprising the Company about the need to prepare information and documentation for law enforcement agencies,
- setting deadlines for preparing information and gathering documentation,

<sup>14</sup> The judgement of the District Court in Ruda Śląska of 19.10.2017, court file No. VI K 356/17, unpublished.

<sup>15</sup> Pursuant to the resolution of the Management Board of Polska Grupa Górnicza sp. z o.o. of 10 May 2016 on adopting internal normative regulations to be applied at Polska Grupa Górnicza sp. z o.o., the internal normative regulations, applied so far at KW S.A., were adopted for implementation, including the regulations of the President of the Management Board of KW S.A.

<sup>16</sup> Act of 28 January 2016, the Law on Prosecutor's Office, consolidated text, Dz.U. [Journal of Laws] of 2019, item 740.

<sup>17</sup> Act of 6 April 1990 on the Police, consolidated text, Dz.U. [Journal of Laws] of 2019, item 161, as amended

<sup>18</sup> Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency, consolidated text, Dz.U. [Journal of Laws] of 2018, item 2387.

<sup>19</sup> Act of 9 June 2006 on the Central Anti-Corruption Bureau, consolidated text, Dz.U. [Journal of Laws] of 2019, item 1921, as amended.

<sup>20</sup> Act of 23 December 1994 on the Supreme Audit Office, consolidated text, Dz.U. [Journal of Laws] of 2019, item 489, as amended.



- monitoring the course of information preparation and documentation collection,
- verifying the documentation to be provided in terms of completeness,
- formal delivery of the prepared information and documentation to law enforcement agencies.

One of practical implications of the above solution is to redirect requests for information from law enforcement agencies to the said Office, regardless of how a given letter has been addressed. The underlying assumption is to ensure such information flow between PGG S.A. and the aforementioned entities so that the information provided to the Company is adequately and reliably verified, and the responses given are comprehensive and extensive. Its task is to enable actual collective monitoring of the Company's fields of activity which may potentially be subject to crime and, if the need arises, to react promptly not only towards a given entity, in which a certain criminal behaviour model has been disclosed, but towards all of the entities making up that Company. This concept needs to be approved, especially considering the fact that Polska Grupa Górnicza S.A. consists of a Head Office and 13 branches, i.e. 8 mining works and 5 specialist works, which are located in various parts of the Śląskie Voivodeship<sup>21</sup>. The very selection of a unit responsible for internal control and audit to coordinate contacts with law enforcement agencies can be considered adequate: this selection is not that obvious, since general life experience demonstrates different approaches of business entities of sizes similar to PGG S.A. to this particular issue. It seems, however, that the solution used in the analysed case is the optimal one as it is quite significant that the unit under analysis is responsible for conducting 'internal investigations' within the PGG S.A. structure, thus its working methodology is often similar to that employed by law enforcement agencies.

### Example III

In 2016, the Police asked PGG S.A. to provide documents and information related to the functioning of the PGG S.A. predecessor, i.e. KW S.A. The information in which law enforcement agencies were interested concerned many areas of the Company's operations and activities. The Internal Control and Audit Office, after receiving inquiries from the Police, co-ordinated the activities of individual branch offices in this respect, which resulted in extensive collection of the required documents. The materials delivered to the Office were then verified and the discrepancies between them were explained within the Company. As a result, law enforcement agencies were provided with most of the requested documents (the auditors were of the opinion that certain documents – which the Company no longer had – could be vital for the investigation) and relevant information was provided. This allowed the Police to take effective action in the said case.

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<sup>21</sup> *Electronic source:* <https://www.pgg.pl/kontakt/dane-teleadresowe>, accessed: 20.01.2020.

## Example IV

In February 2019, officers of one of the services provided operational information to the Internal Control and Audit Office about an anonymous letter, which indicated that one of the materials used at the bottom of the mine and delivered to the PGG S.A. branches did not comply with the required technical specification (i.e. its use might pose a threat to the health and life of the miners). The Internal Control and Audit Office, immediately after receiving this information, undertook relevant actions, including the collection of samples of the said material and commissioning laboratory tests (they confirmed the non-compliance of the material with technical specifications). During consecutive audit activities, its further use was forbidden, the branches to which it was delivered were identified along with (with the participation of other branch offices) potential locations where it could already have been used. The material that had not yet been used was secured. After completing the audit activities, the Internal Control and Audit Office informed the officers, from whom it had originally obtained information, of its findings. At present (as of 20.01.2020) an investigation is under way in this case; it is being conducted in view of an offence under Article 160(1) of the Criminal Code (i.e. exposure to the risk of loss of life or serious damage to health) and Article 286(1) of the Criminal Code (i.e. fraud).

## Exchange of information between law enforcement agencies and Polska Grupa Górnicza S.A. in 2016-2019

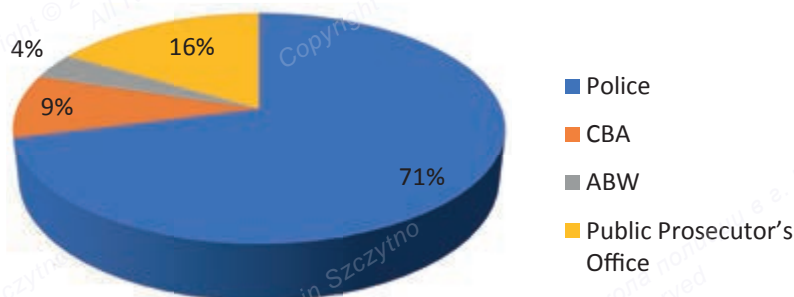
As indicated above, the model of information exchange between law enforcement agencies and organisational units within the Company, adopted by PGG S.A., assumes that this exchange will be conducted only through the Internal Control and Audit Office. This Office provides or authorises replies to any correspondence received by the Company from law enforcement agencies, and also prepares – in connection with irregularities, identified during control and audit procedures, that may indicate the possibility of a criminal offence having been committed against the PGG S.A. – relevant notifications for these agencies. An analysis of correspondence held by the Office, whose sender or addressee were law enforcement agencies, demonstrated that this exchange of information has occurred many times. In 2016-2019, it covered 183 cases. Most frequently, information was exchanged in writing with the Police, less frequently with the Central Anti-Corruption Bureau, the Internal Security Agency, and the Public Prosecutor's Office. In the case of the Police, such a situation concerned 137 cases. Information on 17 cases was exchanged with the Central Anti-Corruption Bureau, 7 with the Internal Security Agency, and 32 with the Public Prosecutor's Office<sup>22</sup>.

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<sup>22</sup> In some cases, the information exchange took place with more than one entity, e.g. with the Internal Security Agency and the Police.

Fig. 2

**Exchange of information in writing between the Internal Control and Audit Office of PGG S.A. and law enforcement agencies in 2016-2019 (an agency – a case, n=193<sup>23</sup>)**



Source: the author's own research

An analysis of the correspondence sent to the Internal Control and Audit Office from law enforcement agencies shows that these agencies (in particular this applies to the Police) often addressed PGG S.A. regarding providing information on the Company's employees, whereas the underlying proceedings were not related to the operations of PGG S.A.: for instance, they concerned criminal proceedings for an offence under Art. 209 (1) of the Criminal Code (failure to provide maintenance support), and Art. 297 (1) of the Criminal Code (credit fraud). These situations took place in 63 cases and constituted 34.4% of the total number of cases (n = 183) which were the responsibility of law enforcement agencies in the period indicated above. In the remaining 120 cases, the correspondence concerned the provision of information related to the Company's operations, and this can be further divided into three main categories:

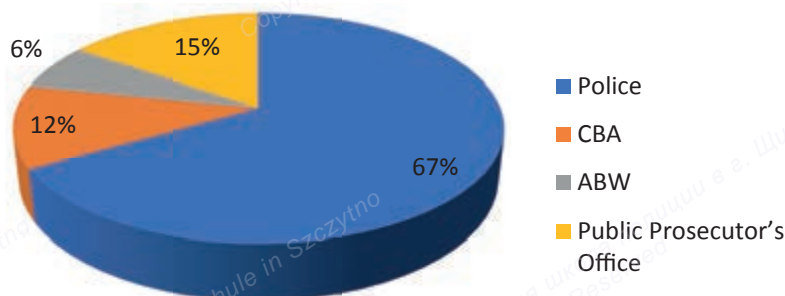
- cases related to a suspicion of a criminal offence having been committed against PGG S.A. (71 cases, 38.8% of all cases). They concerned such issues as tender procedures, coal trade, implementation and settlement of concluded contracts, machinery and equipment management, materials management, and scrap metal management,
- cases related to a suspicion of a criminal offence having been committed, but not against PGG S.A., i.e., for instance, concerning a case of fraud related to coal trading to the detriment of a third party, when information held by PGG S.A. regarding the quality of coal sold to a broker might appear relevant in view of the facts of the case (43 cases, 23.5% of all cases),
- cases related to the PGG S.A. operations, but not related to criminal proceedings, i.e., for instance, the provision of information on radioactive materials that the Company is in possession of (6 cases, 3.3% of all cases).

<sup>23</sup> See comment No. 22.



Fig. 3

**Exchange of information in writing between the Internal Control and Audit Office of PGG S.A. and law enforcement agencies in 2016-2019 in cases related to the suspicion of a criminal offence being committed against PGG S.A. (an agency – a case; n= 7824)**



Source: the author's own research

As further discussed, of key importance is the first of these categories, i.e. correspondence concerning issues related to a suspicion of a criminal offence having been committed against PGG S.A. As indicated in Fig. 3, the entity with which the information in writing was most often exchanged in this respect was the Police. In matters concerning Polska Grupa Górnicza S.A., officers of the city or county police headquarters were contacted most frequently (as occurred in 33 cases)<sup>25</sup>. Less frequently – in 22 cases – employees of the Internal Control and Audit Office contacted officers of the Regional Police Headquarters in Katowice<sup>26</sup>.

An analysis of requests for information addressed to PGG S.A. or the submission of relevant documentation in cases concerning the suspicion of a criminal offence having been committed against the Company allows us to distinguish three primary ways of formulating them, namely:

1. requests for information about specific employees of the Company, along with a request to issue HR documentation concerning them, i.e. contracts of employment, scopes of activities, time records, contracts on keeping trade secrets, or non-competition agreements, without specifying the reason for the given agency's interest in the subject. This category also includes requests for information about specific external entities cooperating with the company, along with a request to release documentation related to the said cooperation, i.e. an offer made by a given entity in a tender procedure, a civil law agreement concluded with that entity, reports of acceptance of work performed by a given entity, or accounting documents, also without specifying the reason for the agency's interest in the given entity,

<sup>24</sup> See comment No. 22.

<sup>25</sup> The City Police Headquarters in Katowice was the Police Headquarters with which information was exchanged in the highest number of cases – this exchange concerned 17 cases.

<sup>26</sup> In 3 cases, both the City and County Police Headquarters as well as the Regional Police Headquarters were contacted.

2. requests for information on the functioning of a specific area of the Company's operations, along with a request to release documentation directly related to it, e.g. business plans, technical and business plans, tender documentation of contracts, regulations, technical and operational documentation of machinery and equipment, mining and geological documentation, work acceptance reports, coal sales documentation, invoices, etc. without indicating the reason for the agency's interest in this area. It should be stressed that the number of enquiries formulated in a manner characteristic of this category was highest in the analysed research material,

3. requests referred to in Sections 1 or 2 above, but with the reason for the agency's interest in the given employee (external entity) or area being specified.

It is not possible to indicate *in abstracto* a more or less appropriate manner of formulating these requests. This would be an obvious failure. Naturally, the manner of formulating a given request by a given authority depends on a variety of factors, e.g., the specificity of a given case, the way it is handled (overt, covert), and the investigation tactics adopted. In addition, the method and scope of information provided to the external entities - PGG S.A. being undoubtedly such an entity to law enforcement agencies, regardless of the nature of the injured party under Article 49 (1) of the Code of Criminal Procedure<sup>27</sup> - should result from the basic principles of investigative techniques and tactics, in particular the principles of confidentiality on the one hand, and the principles of speed, accuracy, and purposefulness of actions on the other<sup>28</sup>. In the enquiries sent to the Internal Control and Audit Office of PGG S.A. by law enforcement agencies, and the replies given to them, a certain correlation can be observed: the more precise a request or an enquiry is, the more comprehensive response, pointing out to potential sources of evidence, is given. This correlation may seem obvious, yet it does have a significant impact on the further course of proceedings. It can be claimed that a precise formulation of questions shortens the duration of proceedings by preventing unnecessary duplication of correspondence, at the same time reducing the likelihood of the Office's employees being unable to properly secure documentation and other possibly relevant material evidence in a given case.

### The common goal – a cooperation model

The documentation held by PGG S.A. allows to formulate a thesis that the majority of cases conducted by law enforcement agencies in relation to actions against PGG S.A. are initiated due to information obtained by these agencies from sources other than the findings of the Internal Control

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<sup>27</sup> Act of 6 June 1997 – the Code of Criminal Procedure, consolidated text, Dz.U. [Journal of Laws] of 2018, item 1987, as amended.

<sup>28</sup> Hanausek T, Zarys..., *op. cit.*, pp. 29-32.

and Audit Office. In the audited period, the Office prepared relatively few, i.e. 8 notifications on the possibility of a criminal offence having been committed. Yet, not the 'quantitative', but 'qualitative' aspects seem to be more important as an analysis of these notifications reflects their comprehensive nature. As a rule, they covered systematised information that was relevant in view of the so-called 'seven golden questions of criminalistics'<sup>29</sup> that, in line with what Stanisław Pikulski says, can be described as explicated<sup>30</sup>: this information precisely and adequately presented circumstances in which a given criminal offence was to have taken place, or identified potential sources of evidence that could be used in legal proceedings. An assumption should be made that employing highly qualified and experienced experts from various key mining industry branches in the Office (who were supported by a professional attorney in criminal law) significantly affected the preparation of the said notifications. However, it seems that nothing prevents the Office from providing the results of its work to relevant agencies not through an official notification on the possibility of a criminal offence having been committed, but rather in a more informal manner, i.e. as part of gathering intelligence by these agencies. From the point of view of investigative techniques and tactics, in certain situations, this form of cooperation may even be recommended. What should also be stressed is the fact that the Office's potential can – or even should – be used by law enforcement agencies even when the information about the possibility of a criminal offence having been committed comes from another source which is external to PGG S.A., e.g. to verify information found in anonymous letters that gave rise to the agencies' activity. Considering the abovementioned statistics, this scope of cooperation seems to be of vital importance. When evaluating the significance of this cooperation, it should be stated that it may bring benefits to both parties concerned. From the point of view of law enforcement agencies, it provides an opportunity to have an inflow of detailed information at an early stage of the proceedings, which, as it is rightly noted in the relevant literature, stimulates detection and evidence-gathering actions<sup>31</sup> and, in principle, enables

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<sup>29</sup> Kulicki M (Ed.), *Kryminalistyka. Wybrane zagadnienia teorii i praktyki śledczo-sądowej*. Toruń, 2009, p. 51.

<sup>30</sup> Pikulski P, *Podstawowe zagadnienia taktyki kryminalistycznej*. Białystok, 1997, pp. 122.

<sup>31</sup> Detection, following the definition offered by T. Hanausek, should be understood as 'all activities (search, disclosure, identification) of law enforcement agencies aimed at disclosing an incident identified as a criminal offence at a given stage of proceedings, and at obtaining information enabling a hypothesis to be formed regarding the person remaining in a legally relevant causal relationship with this incident, followed by the determination of data concerning that person (...) and as a result this person's detention, and the collection of preliminary materials that substantiate the hypothesis of this person's perpetration to an extent that justifies the commencement of proving' – Hanausek T, *Zarys kryminalistycznej teorii wykrywania. Część I. Pojęcie i przedmiot wykrywania sprawców przestępstw*. Warsaw, 1978, p. 45.

the optimal tactics for further actions to be selected, thus significantly increasing their effectiveness<sup>32</sup>. The Company thus has a powerful ally to combat irregularities that generate additional costs and losses. In other words, the same event repeatedly constitutes to law enforcement agencies a criminal offence that requires a criminal and legal reaction, while to PGG S.A., it is a source of incurring unreasonable costs and losses. Therefore, it seems important to develop an effective bilateral cooperation model that would be largely based on mutual trust and – whenever possible – partnership<sup>33</sup>. Besides the previously mentioned forms, this may be manifested in, e.g., using the Office's employees as consultants, undertaking joint actions, and sending requests to the Office for carrying out *ad hoc* controls for a precisely defined purpose. Practice has shown that this approach allows more satisfactory results to be achieved than in the case of limiting contacts with the Office only to asking general questions and requesting the release of specific documents. The above demands do not obviously mean that the information received from the Internal Control and Audit Office of PGG S.A. (as from any other external entity) should be treated by law enforcement agencies without any criticism – such a claim would be absurd and would be in stark contrast to the basic principles of criminalistics and the criminal procedure regulations. They also do not encourage officers to be overly familiar in their contacts with employees of the Office, as the boundaries of their relations must be determined every time by the interests of the case and by keeping a certain scope of classified information confidential. Their overarching goal is just to demonstrate the importance of an information source, valuable from the perspective of the specificity of the analysed criminal offence, of a rather special nature which, just as any other source, should be subject to adequate verification and be treated in accordance with the developed principles of investigation tactics and operational work.

### Example V

In December 2016, officers of the Regional Police Headquarters in Katowice informed the Internal Control and Audit Office that, as a result of covert activities, it had been established that more coal was exported from one of the PGG S.A. branches than was reported in the sales documents.

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<sup>32</sup> Hanausek T, Zarys taktyki..., *op.cit.*, p. 68-73, 103; Hanausek T, Zarys kryminalistycznej teorii wykrywania. Część II. Proces wykrywczy. Warsaw, 1987, pp. 114-116.

<sup>33</sup> One of potential solutions in this respect seems to be a cooperation model similar to the CAPRA (Clients, Acquiring / Analysing Information, Partnerships, Response, Assessment) model developed by the Royal Canadian Mounted Police. This model stresses building cooperation with external entities and regular information acquisition from them as well as having an insight into their view of a given problem – see: Łojek K, *Metodyka rozwiązywania problemów kryminalnych*. Szczytno, 2008, pp. 25-27; Palmiotto M.J, *Community Policing: A Police-Citizen Partnership*. New York, 2011, pp. 266-267.

They simultaneously indicated the registration numbers of two vehicles that were believed to have participated in this business. After obtaining this information, the employees of the Internal Control and Audit Office, together with the employees of the Security Office, analysed the CCTV footage and coal sales documentation, and confirmed that the amount of coal actually exported from the said branch was higher than indicated in the sales documents. As the analysis showed, not two but five articulated vehicles (a tractor and trailer) systematically participated in this business. In addition, it was found that the weighing of cars with an excessive amount of coal was carried out only on one of the two scales in stock in the said Company's branch, and the vehicles were always weighed by the same employee. On the basis of the analysis of the CCTV footage, it was also found that during the weighing of the said tractors, an unidentified person was always present nearby the scale and a car with registration numbers from outside the Śląskie Voivodeship was parked there. These findings were immediately forwarded to the officers of the Regional Police Headquarters. As a result of further coordinated actions, all five vehicles were detained in February 2017. Their control weighing showed that each of them transported much more coal than was reported in the sales documents. PGG S.A. suffered losses of over PLN 60,000 (i.e. damage only for the criminal activities on the day of detention, disclosed in *flagranti*)<sup>34</sup>. Concurrently with detaining the vehicles, a person present nearby the scale was also detained. As a result of a personal search, an electronic device was disclosed that was used to control the balance remotely.

A related issue, which is definitely worth addressing, is that the specificity of the mining industry and related crime results in the fact that a significant portion of the material evidence – possibly indicating that a criminal offence has been committed – in the vast majority of cases will be irretrievably lost (or access to it will be significantly more difficult) if it is not properly secured in a relatively short period of time. For instance, materials delivered to coal mines that are not compliant with the required standards are quickly transported to the bottom of the mine and used there; machines and equipment that are supplied as new are transported to the bottom of the mine, where after their set-up they operate in extreme conditions; higher quality coal (e.g. class 23) sold as a lower quality class (e.g. class 19) is burnt or mixed with other classes. For this reason, in these cases, the classic thought of Edmond Locard that *'the more time passes, the more the truth disappears'*<sup>35</sup> is frequently given special significance. This problem also affects the documentation held by the

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<sup>34</sup> As of 20.01.2020, criminal proceedings in this case have not been yet finalised (the case is still in court). It should be said that in this particular case, the offence in the indictment was described as a continuing offence (Art. 12 (1) of the Criminal Code) that ran from 03.2015 until 02.2017, and the resultant damage amount was estimated to be no lower than PLN 945,155.50.

<sup>35</sup> Locard E, *Dochodzenie przestępstw według metod naukowych*. Łódź, 1937, p. 205.



Company<sup>36</sup> indicating that a crime might have been committed (e.g. report books, technical documentation, foremen's records) as it is, in accordance with the Company's internal regulations, systematically disposed of. It should be emphasised that an analysis of the internal regulations of PGG S.A. showed that the issue of documentation that has been disposed of is unfortunately regulated differently depending on the specific location, i.e. the head office or individual branches. Moreover, the method of documenting identical activities in individual branches of the Company is also not consolidated. A similar situation occurs with regard to CCTV footage stored by the Company. This leads to a situation in which access to many potentially significant sources of evidence is difficult or significantly limited, which is directly reflected in the effectiveness of law enforcement agencies. In practice, this is demonstrated, e.g., through the inability to determine, in accordance with the requirements of the evidence law, the amount of actual damage caused to PGG S.A. due to a criminal offence and the possibility of attributing perpetration only within a limited scope. Thus, it may seem that it is extremely important to ensure working and effective communication between the Internal Control and Audit Office as an entity coordinating activities in the said field within the Company and being effective therein, and law enforcement agencies. Therefore, the participation of the Office's employees in 2018 in training for employees of internal control and audit in coal mining companies that concerned securing evidence in proceedings related to economic crimes, which was organised by the Police Academy in Szczecino, should be praised as worthy.

## Summary

Roman Zdybel aptly argues that effective fight against contemporary crimes requires permanent cooperation with the society so that a constant supply of information needed for the effective implementation of detection and evidence-gathering is ensured<sup>37</sup>. This statement appears to be updated in a special way in combating crime in the coal mining industry. The PGG S.A. example shows that effective cooperation between law enforce-

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<sup>36</sup> It should be considered that a substantial number of criminal offences against PGG S.A. belong to the widely understood category of economic crime. In the relevant literature, some scholars aptly note that in the case of this category of criminal offences, documents frequently constitute the primary evidence and, with a view to the effectiveness of proceedings, it is vital to establish the whereabouts of these documents, and then to secure them – see: Strzelecki M, *Paradygmat współczesnej kryminalistyki uniwersyteckiej a ślady przestępstw gospodarczych* [in:] Wójcikiewicz J, Kwiatkowska-Wójcikiewicz V (Eds), *Paradygmaty kryminalistyki*. Krakow, 2016, pp. 166-167.

<sup>37</sup> Zdybel R, *Aktywizacja współpracy społecznej i prawnej z organami ścigania (Policją) w przekazywaniu wiadomości o inkryminowanych zdarzeniach w świetle spenalizowanych regulacji art. 304 § 1 i 2 k.p.k. i art. 240 § 1 k.k. w zw. z art. 234 k.k. i art. 238 k.k.* *Przegląd Policyjny*, 2018, Vol. 3 (131), pp. 113-114.

ment agencies and the said companies can be an efficient tool in combating crime that affects coal mining companies. Zdybel's study indicates that significant relationships exist between the effectiveness in prosecuting offences in the coal mining industry and the efficient and reliable flow of information between the injured party and law enforcement agencies<sup>38</sup>. Regardless of whether this flow takes place during legal proceedings or investigations, its importance cannot be overestimated. In its absence, due to the substantial specificity and specific nature of the crimes under consideration, the risk of failure to notice, or of failure to correctly interpret the ongoing events by persons conducting proceedings should be assessed as high, especially in view of the fact that the majority of cases analysed are conducted by departments for economic crime or departments for crimes against property at the City Police Headquarters, i.e. entities that are in practical reality responsible for handling a relatively large number of cases on a very diverse range of subjects. In this particular context, the inflow of the information in question to agencies conducting evidence-gathering activities and detection should be perceived as a valuable asset that is to be properly used to develop a relevant methodology<sup>39</sup> of the actions undertaken, and their direction<sup>40</sup>. Life experience, in turn, shows that success in this field translates into the main goal that should always be the ultimate objective of law enforcement agencies, i.e. in accordance with Article 2(1)(1) of the Code of Criminal Procedure, resulting in a situation where the perpetrator of the crime is found and brought to criminal liability, and the innocent person does not bear this liability. The other, preventive aspect of the said cooperation is no less important: the Company, as a result of obtaining specific information from law enforcement agencies about the disclosed *modus operandi* of perpetrators, can implement relevant modifications to its functioning, or introduce new secure solutions, and as a result hamper or even prevent similar criminal activities against it in the future.

In light of the above considerations, the fact that PGG S.A. has developed a model of active cooperation with law enforcement agencies and established a central coordinating unit in the form of the Internal Control and Audit Office is very optimistic. The Company rightly observed that although pursuant to Article 304(1) of the Code of Criminal Procedure, it is not legally obliged to inform law enforcement agencies about a crime it has discovered, or to provide them with assistance in a scope bigger

<sup>38</sup> Cf. Pikulski S, Podstawowe..., *op. cit.*, pp. 125-126

<sup>39</sup> The criminalistic thought views the information system that law enforcement agencies have at their disposal as one (apart from the type of the case) of the key factors determining the selection of a relevant methodology for a given case. Its most important elements are: the amount of information possessed by the agency, information quality and mutual cohesion – see: Hanausek T, Zarys taktyki..., *op.cit.*, pp. 183-186.

<sup>40</sup> In practice, this information may seem particularly helpful in preparing an investigation plan – see: Gruza E, Goc M, Moszczyński J, Kryminalistyka – czyli rzecz o metodach śledczych. Warsaw, 2008, pp. 78-80.

than required by Article 15(3) of the Code of Criminal Procedure, this is indisputably in its interest. It has been demonstrated in practice that this approach yields tangible benefits, including financial gains, for instance in the form of a real possibility of obtaining – by way of a convicting judgement – the commitment of the perpetrator of a given crime to compensate for the damage caused by it. Therefore, it should be hoped that the Company will continue to follow the chosen path of active cooperation with law enforcement agencies, and will constantly aim at its improvement (e.g. by presenting complex technical issues in an even more descriptive way and being open to feedback). It should be remembered, however, that a key role in the effectiveness of this cooperation is played by the approach demonstrated by law enforcement agencies, in which elements such as the adoption of an adequate model and the relevant selection of persons to deal with a given case, or their attitude towards cooperation based on mutual trust, and also consistent with the principles of investigative techniques and tactics seem to be of particular importance. A justified suggestion in this respect is also to designate selected police officers in units within the agencies that most often come into contact with crime related to the industry under analysis (the data indicate that in the case of PGG S.A., this applies mainly to the City Police Headquarters in Katowice and the Regional Police Headquarters in Katowice); it is also important to provide those officers with relevant field training which would allow skilful handling of its specific character.

Last but not least, one more universal dimension should be considered: it seems justified to claim that developing an analogous model of cooperation among law enforcement agencies is also recommended – for the same reasons as in the case of PGG S.A. – for other large business entities that, due to their field of operation, become ‘theatres of criminal activities’<sup>41</sup>, and in particular when, as is happening in the coal mining industry, this crime is somewhat peculiar.

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**Keywords:** coal mining companies, crime, internal control system, law enforcement agencies, cooperation, investigative techniques and tactics.

**Summary:** The specificity of crimes related to the coal mining industry means that the importance of an effective and efficient flow of information between coal companies and law enforcement agencies is often pivotal to achieving success in investigation and prosecution. In the case of these crimes, the risk of misunderstanding technical issues related to the particularities of the coal mining sector is a serious impediment to successfully addressing violations of criminal law. The paper critically analyses and evaluates the current forms of cooperation between the largest coal mining company in the European Union, i.e., Polska Grupa Górnicza S.A. and law enforcement agencies. The article stresses the importance of the internal control system in detecting criminal activity inside the company, emphasising that the in-depth knowledge and resources held by the internal control entity are, in principle, highly valuable sources of information to law enforcement agencies, and may be practically utilised to optimise as well as accelerate investigative and evidence-gathering procedures. The paper concludes with a claim that a proactive and participative approach of both law enforcement agencies and private business establishments is indicated in their interactions and helps them to achieve common goals. The author presents good practices in the area under study, and discusses potential improvements.